

INTERGOVERNMENTAL AGREEMENT FOR SERVICES

This Agreement, by and between Cannon Beach Rural Fire Protection District ("District") and the City of Cannon Beach ("City"), collectively "the Parties" and individually "Party", is made and entered into the ____ day of February 2023 ("Effective Date").

RECITALS

Whereas, Oregon Revised Statutes (ORS) Chapter 190 authorizes units of local government to enter into written agreements with other units of local government for any or all of the functions and activities of a municipality to the agreement; and
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Whereas, both Parties are duly organized local governments; and

Whereas, the Parties wish to reassign responsibility of lifeguard services for protection of the Cannon Beach ocean shore.

AGREEMENT

Now, therefore, in consideration of each Party's performance of the covenants, terms and conditions herein as they run to the benefit of the other, the Parties mutually agree:

SECTION 1 – PURPOSE

The purpose of this Agreement is to define the terms and conditions by which the City and District will operate to provide lifeguard services.

SECTION 2 - DEFINITIONS

2.1 ~~The operating time frame of this Agreement is from~~ Lifeguards shall be present on the Beach beginning the Friday before Memorial Day and extending to the third Sunday in September ("Season").

2.2 The service area of this Agreement is from Chapman Point at the north end to Silver Point at the south end ("Beach").

2.3 The scheduled services of this Agreement are to be performed Monday to Sunday daily from 10:00am to 8:00pm ("Duty Shift") during the Season.

~~2.3~~ 2.4 Temporary, seasonal employees hired by the District to provide lifeguarding services ("Lifeguards").

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Commented [AD2]: Why are we saying Monday to Sunday? Isn't every day of the week?

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SECTION 3 - SERVICES TO BE PROVIDED BY DISTRICT

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INTERGOVERNMENTAL AGREEMENT

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Under this Agreement, the District shall be responsible to:

- 3.1 Recruit and hire an adequate number of Lifeguards to provide full staffing before the start of the Season. This process shall begin in March of each year. All Lifeguards shall be employees of the District.
- 3.2 Train all Lifeguards to the American Red Cross lifeguard standard or another mutually agreed certification.
- 3.3 Certify all Lifeguards to operate City owned vehicles and equipment.
- 3.4 Fully staff the Beach during the Season with Staff four (4) Lifeguards; -however at no point shall staffing be lower than during the Duty Shift and a minimum of two (2) Lifeguards in exception situations. The District may substitute paid firefighters if Lifeguards are not available.
- 3.5 Have Lifeguards present on the Beach from 11:00am to 7:15pm. The remainder of the Duty Shift may be used for equipment setup and cleanup off the Beach.
- 3.6 Protect and clean all City owned equipment, vehicles and facilities. The District employees shall use all City owned equipment, vehicles and facilities responsibly. The District shall be responsible for any intentional or negligent damage to City owned property.
- 3.7 Notify the City of loss, damage, or needed repairs to City owned equipment, vehicles and facilities in a timely manner, but at minimum three (3) business days from when a District employee becomes aware of the issue.

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SECTION 4 - SERVICES TO BE PROVIDED BY CITY

Under this Agreement, the City shall be responsible to:

- 4.1 Provide access to and use of all equipment stored at the Lifeguard Shed located behind the Cannon Beach Police Department station as of the Effective Date.
- 4.2 Install and provide use of a Lifeguard Tower to be centrally located on the Beach near Haystack Rock.
- 4.3 Provide access to and use of a mutually agreed number of designated Lifeguard vehicles, including ATVs and side-by-sides. Insure and maintain these vehicles in working condition.

SECTION 5 - COSTS

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- 5.1 The City shall ~~pay-reimburse~~ the District for ~~lifeguard services~~Lifeguards services provided during the Season, as well as ~~all~~ other staffing and activities required to perform the duties of this Agreement, including hiring and training, as described below.
- 5.2 The District shall account for lifeguard services and other activities covered under this Agreement and invoice the City monthly. Billable items ~~may~~ include:
- a. The current fully loaded hourly wage of each Lifeguard or paid firefighter performing lifeguarding services, including applicable employment taxes and PERS.
 - b. Up to ten (10) hours per week for division chief and surf rescue coordinator, billed at their current fully loaded hourly wage.
 - c. Five percent (5%) administrative fee.
- 5.3 The City shall pay invoices within thirty (30) days of receipt from the District.
- 5.4 Total annual billings from the District to the City under this Agreement shall not exceed \$165,000.

SECTION 6- REVIEW, EVALUATION, AND QUALITY ASSURANCE

Both Parties shall notify the other as soon as possible of incidents that affect the quality-of-service delivery under this Agreement. Both Parties agree to work diligently towards resolving any issues that may arise for the mutual benefit of the Parties.

SECTION 7 – LIABILITY/INDEMNITY

- 7.1 To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, District shall defend, indemnify, and hold harmless City, and each of City's elected officials, officers, agents, and employees, from and against any and all losses, claims, actions, costs, judgments, damages, or other expenses resulting from injury to any person (including injury resulting in death) or damage to property (including loss or destruction), of whatever nature, arising out of or incident to the performance of this Agreement by District, including, but not limited to, any acts or omissions of District officers, employees, agents, volunteers, and others, if any, designated by District to perform services under this Agreement.
- 7.2 District shall not be held responsible for any losses, claims, actions, costs, judgments, damages, or other expenses directly, solely, and proximately caused by the negligence of City. District shall be liable to the City for any damage to City equipment, vehicles or facilities caused by the negligence of District employees, volunteers, or agents performing activities under this Agreement.
- 7.3 To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, City shall defend, indemnify, and hold harmless District, and each of its officers, agents, and employees, from and against any and all losses, claims, actions, costs, judgments,

damages, or other expenses resulting from injury to any person (including injury resulting in death) or damage to property (including loss or destruction), of whatsoever nature, arising out of or incident to the performance of this Agreement by City of Cannon Beach, including but not limited to, the acts and omissions of City's employees, agents, volunteers, and others, if any, designated by District to perform services under this Agreement.

- 7.4 City of Cannon Beach shall not be held responsible for any losses, claims, actions, costs, judgments, damages, or other expenses directly, solely, and proximately caused by the negligence of District.
- 7.5 This section does not confer any right to indemnity on any person or Party other than the Parties, waive any right of indemnity or contribution from any person or Party; or waive any governmental immunity.
- 7.6 The obligations of District and City under this section will survive expiration or termination of this Agreement.
- 7.7 The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

SECTION 8 - NOTICE

Any notice required or allowed to be given by this Agreement shall be given by hand delivery or by placing said notice in the United States Mail, first class postage pre-paid, and addressed as follows:

To City of Cannon Beach City Manager
 163 E. Gower
 P.O. Box 368
 Cannon Beach, OR 97710

To Cannon Beach RFPD Fire Chief
 188 Sunset Blvd.
 P.O. Box 24
 Cannon Beach, OR 97110

Said notice shall be deemed to be received when hand delivered or, if mailed, three (3) days after said mailing. If the mailing address of either Parties changes, notice of the change of address shall be given to the other district in writing.

SECTION 9 – DEFAULT

A Party to this Agreement who has cause to believe that the other Party is in default of the terms or conditions of this Agreement, shall give the Party alleged to be in default written notice of said default, and allow not less than ten (10) days for the default to be cured. If the default cannot be cured within ten (10) days, it shall be sufficient if the defaulting Party begins addressing the alleged default and continues with its best effort regarding resolution. If the default is not cured within that time or the time reasonably allowed for cure, the following remedies are available to the Parties:

- Declare this Agreement to be terminated, at which time the provisions of Section 10 of this Agreement shall be complied with.
- Bring an action in the Clatsop County Circuit Court to enforce any provision of this Agreement.
- With the mutually agreement of the Parties, request arbitration of any dispute pursuant to ORS 190.710 to ORS 190.180.

Each of the above remedies is deemed to be cumulative and non-exclusive of any other remedy.

SECTION 10 – TERM AND TERMINATION

10.1 This Agreement shall remain in effect from the date of execution until terminated pursuant to this Agreement.

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10.2 This Agreement may be terminated for cause after the terminating Party has complied with the requirements of Section 9 herein.

10.3 This Agreement may be terminated by either Party, without cause, by the terminating Party giving the other Party written notice of its intention to terminate this Agreement. Such notice shall be given at least ninety (90) days prior to the termination of this Agreement, although, by mutual consent of the Party, this Agreement may be terminated on shorter notice.

10.3 City shall compensate the District for services rendered under this Agreement up to the date of termination.

SECTION 11 – PERSONNEL

The District lifeguard personnel shall at all times remain and be employees of District, subject to the rules and regulations. District shall maintain workers compensation coverage for its employees as required by law. District will supervise all of their personnel while performing duties under this Agreement. The intent of this provision is to prevent the creation of any “special employer” relationship under Oregon workers’ compensation laws, PERS regulations or other state or federal laws.

SECTION 12 - ENTIRE AGREEMENT

This written Agreement is the entire agreement of the Parties hereto regarding the subject matter of this Agreement and contains all of the terms and conditions of the Agreement between the Parties. All prior agreements, understandings, or the like, whether written or verbal, are superseded by this Agreement and shall be of no force or effect whatsoever. Any amendment to this Agreement shall be in writing and signed by the representatives of the Parties as duly authorized by the governing body of each Party.

SECTION 13 – GENERAL PROVISIONS

- 13.1 Oregon Law and Forum. This Agreement, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim between Cannon Beach RFPD and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clatsop County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Parties, by execution of this Agreement, hereby consents to the in personal jurisdiction of the courts referenced in this section.
- 13.2 Compliance with Applicable Law. Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- 13.3 Non-Exclusive Rights and Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- 13.4 Access to Records. The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy, or litigation arising out of or related to this Agreement, whichever is later.

- 13.5 Severability. If any provision of this Agreement is found to be unconstitutional, illegal, or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal, or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- 13.6 Interpretation. The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 13.7 Independent Contractor. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one Party shall be deemed to be a representative, agent, employee, or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- 13.8 No Third-Party Beneficiary. The City and Cannon Beach RFPD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 13.9 Subcontract and Assignment. No Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole discretion.
- 13.10 Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 13.11 Necessary Acts. Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- 13.12 Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective authorized successors and assigns.
- 13.13 Force Majeure. Neither the City nor Cannon Beach RFPD shall be held responsible for delay or default caused by events outside of the City's or Cannon Beach RFPD's

reasonable control including, but not limited to, fire, terrorism, riot, pandemics, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

13.14 No Attorney Fees. In the event any arbitration, action, or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each Party shall be responsible for its own attorneys' fees and expenses.

13.15

SECTION 14 – EXECUTION

The execution of this Agreement by each of the undersigned is done pursuant to the authorization of the governing body of each Party, voted upon in an open meeting in accordance with Oregon Law, and each person executing this Agreement hereby certifies that they are authorized to execute this Agreement on behalf of City of Cannon Beach and Cannon Beach RFPD. In witness whereof, the Parties, through their duly authorized representatives, have executed this Agreement on the date or dates set forth below.

Cannon Beach Rural Fire Protection District

City of Cannon Beach

By: _____
Date: _____
Name: Marc Reckmann
Title: Fire Chief

By: _____
Date: _____
Name: Bruce St. Denis
Title: City Manager